IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 4042 of 2003()

AGAINST THE ORDER IN CRMP. 785 /2002 IN CC.1030/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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PETITIONER: PETITIONER:

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1. REETHA ANTO, SUB DIVISIONAL ENGINEER, BHARAT SANCHAR NIGAM LIMITED (BSNL), MUNDOOR TELEPHONE EXCHANG, MUNDOOR.

2. J.J. SARMA, DEPUTY GENERALA MANAGER (A & C), BHARAT SANCHAR NIGAM LIMITED (BSNL), COCHIN DEVASWAM BOARD BUILDING, TRICHUR DISTRICT.

3. K.B. BRAHMADATHAN, GENERAL MANAGER, BHARAT SANCHAR NIGAM LIMITED (BSNL), TRICHUR DISTRICT.

BY ADV. SRI.K.RAMAKUMAR, SC, BSNL

RESPONDENTS: COMPLAINANTS:

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1. ROMEO JACOB, S/O. JACOB, MEKKATTUKULAM, TRICHUR TALUK, ANJOORE VILLAGE, MUNDOOR, THRISSUR DISTRICT.

2. STATE OF KERALA REPRESENETED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.V.SOHAN

PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/08/2007, ALONG WITH CRMC NO. 1997 OF 2004 THE COURT ON 06/09/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.M.C. No. 4042 OF 2003

AND

Crl.M.C. No. 1997 of 2004

DATED: 06-09-2007

O R D E R

In Crl.M.C. 1997 of 2003 filed under Section 482 Cr.P.C., the petitioners, three in number, seek to quash Annexure B order dated 7-6-2003 passed by the J.F.C.M., Kunnamkulam in Crl. M.P. 9533 of 2002 in C.C. 1030 of 2002 as per which that court rejected the claim of the petitioners that their prosecution without a sanction under Sec. 197 Cr.P.C. is bad. In Crl.M.C. 4042 of 2003 the very same petitioners, by way of abundant caution, have sought to quash Annexure III private complaint pending before the J.F.C.M. Kunnamkulam as C.C. 1030 of 2002.

2. I heard Advocate Sri. K. Ramakumar, the learned counsel appearing for the petitioners and Advocate Sri. K.V. Sohan, the learned counsel appearing for the Ist respondent/complainant.

3. C.C. 1030 of 2002 referred to above arose out of a private complaint filed by the first respondent herein alleging the commission of offences punishable under Sections 120B, 167, 340, 341, 342, 464, 465, 499, 500 and 420 I.P.C. by the petitioners who

are employees of the Bharat Sanchar Nigam Limited (B.S.N.L).

4. Assailing the impugned order Sri. K. Ramakumar, the learned counsel for the petitioners made the following submissions before me: -

In paragraph 9 of the private complaint it has been admitted that the accused are public servants. The private complaint which was registered as Crl.M.P. 785 of 2002 was initially dismissed on 1-2-2002 holding that no sanction under Sec. 197 Cr.P.C. was obtained . The said dismissal was challenged by the first respondent/complainant by filing Crl.R.P. 244 of 2002 before this Court. As per order dated 1-7-2002 produced as Annexure II in Crl. M.C. 4042 of 2003 this Court set aside the order of dismissal and directed the learned Magistrate to re-consider the question of sanction in the light of the decision of the Supreme Court in **Muhammed Haji Raja v. State of Bihar – AIR 1998 SC 1945.** Instead of complying with the said order of this Court the learned Magistrate has relegated the question of sanction to the stage of trial and has at the same time, held that no sanction is necessary to prosecute the petitioners. In **Sankaran Moitra v. Sadhna Das and Another - 2006 (4) SCC 584** it has been held by the Apex Court that sanction is a condition precedent for taking cognizance and that the want of sanction can be raised by the

accused at any stage and when once it is raised, a decision on the question of sanction cannot be postponed. There is nothing in the decision reported in **Mohd. Hadi Raja v. State of Bihar and Another - 1998 SC 1945** to hold that sanction to prosecute the petitioners is not necessary. The petitioners were admittedly employees of the Telecommunication Department of the Union of India and they were on deputation to the B.S.N.L. on 19-7-2001 when the offences were allegedly committed. They were, therefore, "public servants" within the meaning of Sec. 21 I.P.C. and were removable from office only by the Government of India as they were employed in connection with the affairs of the Union within the meaning of Sec. 197 (1) (a) Cr.P.C. Rule 41 of the B.S.N.L. Conduct, Discipline and Appeal Rules, 2006 ("BCDA Rules" for short) shows that the services of the employees of the Telecommunication Department were lent to the B.S.N.L. and the Lending Authority retained control over them. As per Circular dated 2-9-2003 the employees were given the option to be absorbed in the B.S.N.L. and until then they were to be treated as the officers of the Department of Telecommunication. Rule 34 of the B.C.D.A. Rules would indicate that the Telecommunication Department alone could terminate their services. By virtue of Rule 43 of the said Rules with effect from 1-10-2000 they were deemed to

be on deputation in the B.S.N.L. Providing Telecommunication service is the function of the Telecommunication Department and it is this function which has been taken over by the B.S.N.L. which is a company registered under the Companies Act., 1956. When the services of the accused can be terminated only by the Telecommunication Department as long as they were on deputation, there cannot be any controversy that they are employed in connection with the affairs of the Union. Telecommunication is a Central subject falling under Entry 31 of the Union List in the 7th Schedule to the Constitution of India. After the services of the employees of the Department of Telecommunication were lent to the B.S.N.L. it was only in the year 2003 that they were given the option to get themselves absorbed in the B.S.N.L. Until then, they shall be treated as employed in connection with the affairs of the Union within the meaning of Sec. 197 (1) (a) Cr.P.C. on 19-7-2001 when the offences were allegedly committed. Hence, the order passed by the learned magistrate that no sanction is necessary to prosecute the petitioners for the aforementioned offences is unsustainable.

5. I am afraid that I cannot agree with the aforementioned submissions made on behalf of the accused/petitioners. Annexure – III in Crl.M.C. 4042 of 2003 is the private complaint lodged by the

common first respondent herein. The gist of the averments in the said complaint is as follows:-

The complainant hails from a respectable family by name Mekkattukulam tarwad and is held in high reputation and esteem by all concerned. The 3rd accused who was the General Manager of the Thrissur Telecom District of B.S.N.L. had sanctioned an S.T.D. Booth in favour of the complainant's wife Elizabeth at Mundoor. The 3rd accused had also sanctioned a local P.T. booth in favour of the complainant's wife. The 3rd accused had sent the order sanctioning the booth to his subordinate, the first accused. The first accused was given the demand note for Rs. 1,000/- for the purpose of giving the connection. Since the connection was not given, the complainant met the first accused in her office at 12 p.m. on 13-7-2001 and enquired with her the reason for the delay in giving the connection. The first accused abused the complainant alleging in a high voice that he was a fugitive and the said conduct thief and it was calculated to lower the reputation of the complainant in the estimation of others. The first accused also proclaimed that she would not only refuse to give the sanctioned local P.T. connection but would also disconnect the S.T. D. booth sanctioned to the complainant's wife. She then asked the complainant to get out of her office. The complainant was

insulted in the presence of Viswanathan and others who were very well known to the complainant. This incident had caused great mental anguish to the complainant. On 18-7-2001 at about 3 p.m. the S.T.D. booth sanctioned in favour of the complainant's wife was disconnected by the accused as a measure of vengeance towards him. On 19-7-2001 a letter was sent to the complainant stating that a sum of Rs. 13,398/- was pending payment ignoring the instalment facility which was extended to the complainant's wife. The said letter was sent after creating false documents with a view to cause wrongful loss to the complainant. On 19-7-2001 the complainant and his wife together went to meet the 3rd accused. The complainant was not permitted to enter the chamber of the 3rd accused. His wife alone was allowed to meet the 3rd accused. After calling her to his chamber, the 3rd accused illegally detained her for three hours. The 3rd accused had threatened the wife of the complainant by saying that he will disconnect the S.T.D. Booth also if she did not withdraw the complaint lodged against him. Subsequently on 1-8-2001 without any notice or intimation the S.T.D. booth of the complainant's wife was disconnected causing incalculable loss to the complainant. The complainant's wife suffered a mental shock on account of which she and had to be admitted in the hospital for treatment and is even now continuing her treatment. In the

complaint preferred by the complainant no enquiry was conducted nor was any evidence taken and the officers subordinate to the 3rd accused had mentally tortured the complainant's wife. Thereafter, the Hon'ble High court had to be approached for getting restoration of the connection. Subsequently the 2nd accused obtained an authenticated copy of the complaint from the complainant and asked him to withdraw the complaint failing which he threatened to teach the complainant a lesson. Eventhough the complainant had sent a lawyer notice to the accused, they have remained silent. The above acts were committed in furtherance of the common intention to do so and the accused have thereby committed offences punishable under Sections 120 B, 167, 340, 341, 342, 464, 465, 499, 500 and 420 I.P.C.

6. The said private complaint was assigned the number Crl.M.P. 785 of 2002. Initially as per order dated 1-2-2002 the complaint was dismissed by the Magistrate holding that no sanction to prosecute the accused who were public servants was obtained under Sec. 197 Cr.P.C. The said order was challenged before this court by the complainant by filing Crl. R.P. 244 of 2002. As per order dated 1-7-2002 this court set aside the order passed by the trial court and directed that court to reconsider the question of sanction in the light of the decision reported in **Mohd. Hadi Raja v. State of Bihar and**

another - AIR 1998 SC 1945. Thereafter, on 11-9-2002 the learned Magistrate took cognizance of the offences punishable under Sections 342, 167 and 500 I.P.C. in the meanwhile the petitioners/accused filed Crl.M.P. 9533 of 2002 alleging that the complaint was not maintainable for want of a sanction under Sec. 197 Cr.P.C. As per the impugned order dated 7-6-2002 the Magistrate dismissed the said application holding inter alia that even if the petitioners/accused were public servants/Government employees, no sanction was necessary to prosecute them for the offence of wrongful confinement and uttering defamatory words against the complainant and for creating incorrect documents with the intent to cause injury to the complainant.

7. There is no dispute that the Bharat Sanchar Nigam Limited was notified on 30-9-2000 and it started functioning as a company registered under the Companies Act, 1956 with effect from 1-10-2000. It is also an admitted fact that the petitioners/accused were already employees of the Department of Telecommunication under the Government of India and their services were lent to the newly formed company namely Bharat Sanchar Nigam Limited. Their service conditions as on 19-7-2001, that is, the date of commission of the offence, cannot be decided with reference to the B.C.D.A. Rules

which came into force only in the year 2006. Even assuming that the said rules could be pressed into service, it only shows that it was only in the year 2003 that they were given the option to be absorbed as B.S.N.L. employees and until then their services in the parent department could be terminated only by the Department of Telecommunication. This does not mean that the Bharat Sanchar Nigam Limited which is the borrowing employer could not terminate their services so far as the Bharat Sanchar Nigam Limited is concerned. In that event, they would stand repatriated to the Telecommunication Department where their services could be terminated only by that Department. There is also no dispute that the petitioners/accused were receiving their salary from the B.S.N.L on the date of occurrence. Merely because B.S.N.L. which is a company is, after its formation in the year 2000, discharging the functions which were hitherto discharged by the Department of Telecommunication, it cannot be said that B.S.N.L. is a Government Department. Similarly, merely because the petitioners/accused were on deputation to B.S.N.L. it does not mean that their umbilical chord with the Telecommunication Department has not been snapped so far as their services in the B.S.N.L. is concerned. They may be "public servants" within the meaning of Sec. 21 of the I.P.C. But that is not

enough. They should also be, at the time of commission of the alleged offence, employed in connection with the affairs of the Union. When at the time of commission of the alleged offence the petitioners were employed with the B.S.N.L. and not with the Department of Telecommunication it cannot be said that the petitioners were employed in connection with the affairs of the Union. Even if the Central Government were to have all pervasive control over the B.S.N.L. which may thereby answer the description of "State" within the meaning of Art. 12 of the Constitution of India that is not enough to hold that employees of B.S.N.L. are employed in connection with the affairs of the State within the meaning of Sec. 197 Cr.P.C. The very fact that a Company has been formed for the purpose of rendering telecom services will indicate that such services do not constitute inalienable sovereign functions. I am fortified in this view by the decisions in **Dr. Lakshmansingh Himatsingh Vaghela v. Naresh Kumar Chandrashanker Jah and Another - 1990 (4) SCC 169, K.Ch. Prasad v. Vanalatha Devi and Others - AIR 1987 SC 722, Mohd. Hadi Raja v. State of Bihar and another - AIR 1998 SC 1945, S.S. Dhanoa v. Delhi Municipality - AIR 1981 SC 1395 and N.K. Sharma v.**

Abhimanyu - 2005 Crl. L.J. 4529 (SC). Hence, the order passed by the learned Magistrate dismissing the application filed by the petitioners to the effect that their prosecution is not maintainable for want of sanction under Sec. 197 Cr.P.C. does not call for any interference. Resultantly, these petitions which are devoid of any merit are dismissed.

V. Ramkumar, Judge.

V. RAMKUMAR, J.

Crl.M.C. No. 4042 OF 2003
AND
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DATED: 06-09-2007

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